

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

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**JOSE ZALDIVAR,**

**Plaintiff,**

**Docket No.: 22-cv-00065  
(GRB)(ARL)**

**v.**

**ANSWER**

**LEVENT COMPANY, LTD. d/b/a SHISH KEBAB  
GRILL, and MUSLUM LEVENT,**

**Defendants.**  
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Defendants, LEVENT COMPANY, LTD. d/b/a SHISH KEBAB GRILL and MUSLUM LEVENT (hereinafter “Defendants”), by their attorneys, **FRANKLIN, GRINGER & COHEN, P.C.**, as and for their Answer to Plaintiff’s Complaint (the “Complaint”), alleges as follows:

1. The first paragraph of the Complaint sets forth that Plaintiff is bringing claims pursuant to the Fair Labor Standards Act (“FLSA”), AND the New York Labor Law (“NYLL”), and as such it contains no allegations of fact; to the extent that it may be read as setting forth any allegations of fact, Defendants deny those allegations.

2. The second paragraph of the Complaint sets forth jurisdictional invocations that Defendants are not obligated to answer; to the extent that it may be read as setting forth any allegations of fact, Defendants deny those allegations.

3. The third paragraph of the Complaint sets forth venue invocations that Defendants are not obligated to answer; to the extent that it may be read as setting forth any allegations of fact, Defendants deny those allegations.

4. Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in Paragraph 4 of the Complaint.

5. Defendants admit the allegations contained in Paragraph 5 of the Complaint.

6. Defendants admit the allegations contained in Paragraph 6 of the Complaint.
7. Defendants admit the allegations contained in Paragraph 7 of the Complaint.
8. Defendants admit the allegations contained in Paragraph 8 of the Complaint.
9. The ninth paragraph of the Complaint sets forth a legal conclusion that Defendants are not obligated to answer; to the extent it may be read as setting forth any allegations of fact, Defendants deny those allegations.
10. The tenth paragraph of the Complaint sets forth a legal conclusion that Defendants are not obligated to answer; to the extent it may be read as setting forth any allegations of fact, Defendants deny those allegations.
11. The eleventh paragraph of the Complaint sets forth a legal conclusion that Defendants are not obligated to answer; to the extent it may be read as setting forth any allegations of fact, Defendants deny those allegations.
12. The twelfth paragraph of the Complaint sets forth a legal conclusion that Defendants are not obligated to answer; to the extent it may be read as setting forth any allegations of fact, Defendants deny those allegations.
13. The thirteenth paragraph of the Complaint sets forth a legal conclusion that Defendants are not obligated to answer; to the extent it may be read as setting forth any allegations of fact, Defendants deny those allegations.
14. Defendants admit the allegations contained in Paragraph 14 of the Complaint.
15. Defendants admit the allegations contained in Paragraph 15 of the Complaint.
16. Defendants admit the allegations contained in Paragraph 16 of the Complaint.
17. Defendants deny the allegations contained in Paragraph 17 of the Complaint.
18. Defendants admit the allegations contained in Paragraph 18 of the Complaint.

19. The nineteenth paragraph of the Complaint sets forth a legal conclusion that Defendants are not obligated to answer; to the extent it may be read as setting forth any allegations of fact, Defendants deny those allegations.

20. Defendants deny the allegations contained in Paragraph 20 of the Complaint.

21. Defendants deny the allegations contained in Paragraph 21 of the Complaint.

22. Defendants deny the allegations contained in Paragraph 22 of the Complaint.

23. Defendants deny the allegations contained in Paragraph 23 of the Complaint.

24. Defendants deny the allegations contained in Paragraph 24 of the Complaint.

25. Defendants deny the allegations contained in Paragraph 25 of the Complaint.

26. Defendants deny the allegations contained in Paragraph 26 of the Complaint.

27. Defendants deny the allegations contained in Paragraph 27 of the Complaint.

28. Defendants deny the allegations contained in Paragraph 28 of the Complaint.

29. Defendants deny the allegations contained in Paragraph 29 of the Complaint.

30. Defendants deny the allegations contained in Paragraph 30 of the Complaint.

31. Defendants deny the allegations contained in Paragraph 31 of the Complaint.

32. Defendants deny the allegations contained in Paragraph 32 of the Complaint.

33. Defendants deny the allegations contained in Paragraph 33 of the Complaint.

34. Defendants deny the allegations contained in Paragraph 34 of the Complaint.

35. Defendants deny the allegations contained in Paragraph 35 of the Complaint.

36. Defendants deny the allegations contained in Paragraph 36 of the Complaint.

37. Defendants deny the allegations contained in Paragraph 37 of the Complaint.

38. Defendants deny the allegations contained in Paragraph 38 of the Complaint.

39. Defendants deny the allegations contained in Paragraph 39 of the Complaint.

40. Defendants deny the allegations contained in Paragraph 40 of the Complaint.

41. Defendants deny the allegations contained in Paragraph 41 of the Complaint.

42. As to Paragraph 42 of the Complaint Defendants repeat and reallege their answers to each and every allegation contained in Paragraphs 1 to 41 of the Complaint as if fully set forth herein.

43. The forty-third paragraph of the Complaint sets forth a legal conclusion that Defendants are not obligated to answer; to the extent it may be read as setting forth any allegations of fact, Defendants deny those allegations.

44. The forty-fourth paragraph of the Complaint sets forth a legal conclusion that Defendants are not obligated to answer; to the extent it may be read as setting forth any allegations of fact, Defendants deny those allegations.

45. The forty-fifth paragraph of the Complaint sets forth a legal conclusion that Defendants are not obligated to answer; to the extent it may be read as setting forth any allegations of fact, Defendants deny those allegations.

46. Defendants deny the allegations contained in Paragraph 46 of the Complaint.

47. Defendants deny the allegations contained in Paragraph 47 of the Complaint.

48. Defendants deny the allegations contained in Paragraph 48 of the Complaint.

49. As to Paragraph 49 of the Complaint Defendants repeat and reallege their answers to each and every allegation contained in Paragraphs 1 to 48 of the Complaint as if fully set forth herein.

50. The fiftieth paragraph of the Complaint sets forth a legal conclusion that Defendants are not obligated to answer; to the extent it may be read as setting forth any allegations of fact, Defendants deny those allegations.

51. The fifty-first paragraph of the Complaint sets forth a legal conclusion that Defendants are not obligated to answer; to the extent it may be read as setting forth any allegations of fact, Defendants deny those allegations.

52. The fifty-second paragraph of the Complaint sets forth a legal conclusion that Defendants are not obligated to answer; to the extent it may be read as setting forth any allegations of fact, Defendants deny those allegations.

53. Defendants deny the allegations contained in Paragraph 53 of the Complaint.

54. Defendants deny the allegations contained in Paragraph 54 of the Complaint.

55. As to Paragraph 55 of the Complaint Defendants repeat and reallege their answers to each and every allegation contained in Paragraphs 1 to 54 of the Complaint as if fully set forth herein.

56. The fifty-sixth paragraph of the Complaint sets forth a legal conclusion that Defendants are not obligated to answer; to the extent it may be read as setting forth any allegations of fact, Defendants deny those allegations.

57. The fifty-seventh paragraph of the Complaint sets forth a legal conclusion that Defendants are not obligated to answer; to the extent it may be read as setting forth any allegations of fact, Defendants deny those allegations.

58. The fifty-eighth paragraph of the Complaint sets forth a legal conclusion that Defendants are not obligated to answer; to the extent it may be read as setting forth any allegations of fact, Defendants deny those allegations.

59. Defendants deny the allegations contained in Paragraph 59 of the Complaint.

60. Defendants deny the allegations contained in Paragraph 60 of the Complaint.

61. As to Paragraph 61 of the Complaint Defendants repeat and reallege their answers

to each and every allegation contained in Paragraphs 1 to 60 of the Complaint as if fully set forth herein.

62. The sixty-second paragraph of the Complaint sets forth a legal conclusion that Defendants are not obligated to answer; to the extent it may be read as setting forth any allegations of fact, Defendants deny those allegations.

63. Defendants deny the allegations contained in Paragraph 63 of the Complaint.

64. Defendants deny the allegations contained in Paragraph 64 of the Complaint.

65. Defendants deny the allegations contained in Paragraph 65 of the Complaint.

66. As to Paragraph 66 of the Complaint Defendants repeat and reallege their answers to each and every allegation contained in Paragraphs 1 to 65 of the Complaint as if fully set forth herein.

67. The sixty- seventh paragraph of the Complaint sets forth a legal conclusion that Defendants are not obligated to answer; to the extent it may be read as setting forth any allegations of fact, Defendants deny those allegations.

68. Defendants deny the allegations contained in Paragraph 68 of the Complaint.

#### **AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

69. The Complaint fails to state any claims by Plaintiff against Defendants upon which relief can be granted.

#### **AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

70. Plaintiff's claims are barred, in whole or in part, by the applicable statutes of limitations and/or filing periods and/or by the doctrine of laches.

#### **AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

71. Defendants did not engage in willful conduct in violation of the FLSA and, at all

times relevant to this action, acted in good faith and based upon a reasonable belief that their acts and/or omissions were not in violation of the FLSA. Accordingly, pursuant to the FLSA, Plaintiff's statute of limitations is two years.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

72. Defendants did not engage in willful conduct in violation of the NYLL and, at all times relevant to this action, acted in good faith and based upon a reasonable belief that their acts and/or omissions were not in violation of the NYLL. Accordingly, Plaintiff is not entitled to recover and award for liquidated damages for willful conduct pursuant to the NYLL.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

73. Plaintiff is not entitled to liquidated damages because Defendants acted in good faith and had reason to believe their actions and/or omissions did not willfully violate federal and/or state law.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

74. Plaintiff's claims are barred, in whole or in part, by equitable defenses, including the doctrines of equitable estoppel, waiver and/or unclean hands.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

75. The Court does not have jurisdiction over Plaintiff's FLSA claims and should not maintain supplemental jurisdiction over Plaintiff's state law claims.

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE**

76. To the extent Plaintiff is exempt from eligibility for overtime compensation pursuant to the FLSA, he is not entitled to overtime compensation under the FLSA or the NYLL and/or applicable wage orders.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

77. Defendants made complete and timely payment of all wages due to Plaintiff. Accordingly, Plaintiff is not entitled to recover damages for failure to provide wage statements and the wage notice pursuant to NYLL.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE**

78. Because no discovery has been taken at this state of the case, Defendants reserve the right to file and serve additional defenses, as appropriate.

**WHEREFORE**, Defendants demand judgment against Plaintiff as follows:

- i. Dismissing the Complaint in its entirety; and
- ii. Awarding such other and further legal and equitable relief as may be found appropriate and as this Court may deem just and proper.

Dated: Garden City, New York  
April 11, 2022

Respectfully submitted,

By:



Danielle E. Mietus, Esq.

**FRANKLIN, GRINGER & COHEN, P.C.**

*Attorneys for Defendants*

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